THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.15786 OF 2002

Dated: 2nd November, 2005.

Between:

Kongara Ramanjaneyulu … Petitioner

And

1. Government of A.P., rep. by its Principal
   Secretary, Endowments Department,
   Secretariat, Hyderabad, and others. … Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.15786 OF 2002

ORDER :

This writ petition is filed seeking a declaration that the alleged action of the respondents 4 and 5 in attempting to alienate the lands in Sy.No.15/1, 15/2 and 15/3 of Madireddipalli village, h/o. Chapari, Kalyandurg Mandal, Anantapur District which is in possession of the petitioner as arbitrary and illegal.

The petitioner claims to be the lessee in respect of the land in question which admittedly belongs to Narasimhaswamy Temple, Chapari Mandal, Kalyandurg Mandal, Anantapur District. It is stated that the lease which was granted in his favour in the year 1977, is being extended from time to time and since 1977 he has been in continuous possession by paying the lease amounts regularly. By proceedings dated 16-5-1993 the 3rd respondent – Assistant Commissioner of Endowments, Anantapur recommended to the 2nd respondent – Commissioner of Endowments for sale of the said lands in favour of the petitioner by way of private negotiations in terms of Section 80 of The A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short, 'the Act'). It is also stated that on 16-8-1996 he gave his consent to purchase the lands and in pursuance thereof a notice dated 12-11-1997 was published in the local dailies calling for objections, if any. While the said proceedings were pending, the respondents 4 and 5 i.e., the District Collector, Anantapur and the Mandal Revenue Officer, Kalyandurg Mandal attempted to

alienate the said lands to the third parties under the pressure from local political leaders. Since the said action was illegal and in contravention of the statutory provisions, the petitioner filed W.P.No.8953 of 2002. The said writ petition was dismissed granting liberty to the petitioner to seek appropriate relief as and when any specific action is taken by the respondents to alienate the land to the third parties.

Now, this writ petition is filed alleging that the respondents 4 and 5 are taking steps to allot the land in question to some third parties by dividing the land into small plots and as a matter of fact they have also prepared a list of beneficiaries who are eligible for such allotment. The petitioner contends that the 5th respondent - Mandal Revenue Officer who has no authority or power to deal with the land in question shall not be allowed to proceed with the proposed allotment of land to the third parties without conducting any auction and without following the procedure as contemplated under the provisions of the Act. It is also contended that since he has been in possession and enjoyment of the land, unless he is evicted from the said land following due process of law, the respondents 4 and 5 have no right to proceed with the impugned sale.

The 6th respondent - Executive Officer of Narasimha Swamy Temple filed a counter-affidavit denying all the allegations in the writ petition. It is further stated that there is no valid lease in favour of the writ petitioner as approved by the competent authority under the provisions of Endowments Act. It is also explained that in Ananthapur District, a scheme has been evolved under which a District Level Committee as well as State Level Committee have been constituted and the subject lands along with other lands are alienated in favour of the District Scheduled Castes Co-operative Society, Ananthapur District (in short S.C. Corporation). In turn sales were affected in favour of S.C. beneficiaries. It is also stated that under similar circumstances in W.P.No.15250 of 2003 and W.P.No.22355 of 2004 this Court declined to interfere and to disturb the alienations already made in favour of the S.C. Corporations. It is further stated that the process of alienation in fact was concluded long back, even before the interim order was granted on 23-12-2002. On 5-10-2002 the physical possession of lands to an extent of Ac.5056.50 in 106 villages of 28 Mandals, as per

annexure therein, was handed over to the S.C. Corporation on receipt of 30% of cost of the land i.e., Rs.2,55,35,540/- which transaction includes present lands in question. It is also relevant to note that under 'Velugu" scheme, the District Collector has also issued pattas in favour of S.C. beneficiaries in Rc.No.145/2002-03 dated 3-10-2002.

So far as the plea of the petitioner that there was a proposal to alienate the land in his favour in terms of Section 80 of the Act is concerned, it is stated that it is true that the Government issued a Gazette Notification inviting suggestions and objections, if any, regarding the proposed sale in favour of the petitioner. However, ultimately the Government by order dated 7-6-2002 ordered to sell the land in question by dividing it into plots instead of selling it to one individual. Thus, the request of the petitioner to sell the land in his favour was rejected by the Government long back.

The plea of the petitioner that he is a landless poor has also been categorically denied and it is contended that since admittedly the lease is not subsisting, the petitioner cannot claim any vested right to continue in the land in question. The writ petition filed long after the alienation process was concluded is misconceived and liable to be dismissed.

The petitioner filed an affidavit in Reply disputing the plea of the 6th respondent that the land in question was handed over to the S.C. Corporation long back. It is asserted that till today he has not been dispossessed from the land by following due process of law. It is also stated that since he is continuing as protected tenant, the land in question cannot be alienated in favour of third parties without considering his claim to sell the same in his favour.

I have heard the learned Counsel for both the parties and perused the material on record.

As can be seen from the pleadings of the respective parties, the fact that the

petitioner was put in possession of the lands in question as a lessee is not in dispute. However, the 6th respondent temple contends that the lease in favour of the petitioners stood terminated by virtue of Section 82 of the Act and since he is not a landless poor, he is not entitled to any other benefit. It is also the specific case of the 6th respondent temple that the land in question forms part of a large extent of the land belonging to the temple which was alienated in favour of the S.C. Corporation and the possession was also handed over to the Corporation in 2002 itself. The relevant portion of the counter filed by the temple may be extracted as under :

> *"The Government in their G.O.Ms.No.405, Revenue (Endts.II) Department, dated 4-7-2002 have constituted a District Level Committee for identification of temple lands and to consider for purchase so as to distribute the same to the S.C. beneficiaries through S.C. Corporation in Ananthapur District. The said committee in its meeting held on 16-7-2002 has proposed to purchase the lands in question along with other lands of various temples and submitted proposals to State Level Committee at Hyderabad. The State Level Committee in its meeting held on 16-8-2002 has given consent to purchase the lands in question for the above purpose. The Commissioner, Endowments, Hyderabad in Rc.No.M3/63029/2001 dated 23-8-2002 was pleased to approve the said proposal and directed the Assistant Commissioner, Endowments Department, Ananthapur to hand over the lands of certain temples to S.C. Corporation and collect the amount towards sale consideration. Thus, the Assistant Commissioner has received the amount of Rs.2,55,35,540/- from S.C. Corporation, Ananthapur towards 30% cost vlue of the land extent Ac.5056.50 cents in 106 villages of 28 mandals and hand over the lands to S.C. Corporation on 5-10-2002. The lands of subject temple are included in the above total extent. The District Collector, Ananthapur has allotted the lands of subject temple to certain beneficiaries, residents of Chapiri village, belonging to S.C. Kalyandurg Mandal, Ananthapur district through Rc.No.145/2002-03, dated 3-10-2002 under the scheme of 'Velugu' for agricultural purpose."*

It is true that the petitioner disputes the said version and claims that he is still continuing in possession. However, it is not in dispute that the request of the petitioner to sell the land in his favour has already been rejected and by proceedings dated 7-6-2002 the Government has decided to sell the land in question to third parties by dividing the same into plots instead of selling it to one individual. Admittedly, the said proceedings have become final. That apart, since the petitioner

was a lessee of land admeasuring 40 acres, under no circumstances, he can be treated as a landless poor person. If that be so, the lease in his favour stood terminated by virtue of Section 82 (1) of the Act. Even assuming that the petitioner is continuing in possession of the land as of today, there is absolutely no reason to hold that he should be treated as an encroacher.

This question has already been considered by a Division Bench of this Court in W.P.No.4974 of 2004 and batch and by order dated 24-6-2005, it was held as under :

> *"In case of an encroachment, it is still open to the party to show that he was not in unauthorised occupation of the land belonging to the endowment, but under Section 82, all leases held on the relevant date, stood cancelled. Therefore, there is no question of encroachment. Persons who held leases under Section 82 of the Act, could not be termed as encroachers. They were valid leaseholders, but their leases stood cancelled by operation of law and therefore, the mechanism provided by Section 82 of the Act would apply and mechanism under Section 82 of the Act has been framed under the Rules."*

In the light of the ratio laid down in the above case, I do not find any substance in the contention of the petitioner that the action of the respondents in seeking to dispossess him without following the procedure as contemplated under Section 83 of the Act is arbitrary and illegal. Hence, the writ petition is misconceived and therefore the relief as prayed for cannot be granted.

Though the respondents pleaded that the land in question has been alienated in favour of the S.C. Corporation in the year 2002 itself, the learned Counsel for the petitioner asserts that the petitioner is in physical possession of the land in question as of today and that there is a standing crop of Groundnut. In the circumstances, the petitioner is granted liberty to furnish an undertaking before the 6th respondent that he would vacate the land in question and hand over the physical possession to the 6th respondent immediately after harvesting the standing crop without raising any further objection. Such an undertaking shall be filed within two weeks from today. In

case such undertaking is given within the time specified above, the respondents shall allow the petitioner to continue in possession till the standing crop is harvested.

The Writ Petition is accordingly disposed of. No costs.

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2nd November, 2005.

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